

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of:

Joseph R. BYRUM *et al.*

Appln. No.: 09/552,087

Filed: April 21, 2000

For: Nucleic Acid Molecules and Other  
Molecules Associated with Plants

Art Unit: 1634

Examiner: Juliet Caroline SWITZER

Atty. Docket: 16517.132

Confirmation No. 4196

**APPELLANT'S REPLY BRIEF**

Mail Stop Appeal Brief – Patent  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Sir:

This is a reply to a new point of argument not set forth in the Final Rejection, but raised in the Examiner's Answer mailed April 1, 2004 ("Examiner's Answer"). *This Reply Brief is submitted in triplicate.*

**1. The Examiner's New Points of Argument**

**a. The Rejection Raised Under 35 U.S.C. § 112, First Paragraph**

Under Heading Number 11, "Response to Argument", The Examiner's Answer states that the Appellant argues that "that the art is highly unpredictable." Examiner's Answer at page 17. However, this issue was *not* raised in the Final Office Action mailed August 11, 2003 ("Final Action") or addressed by Appellant in any paper filed subsequently thereto.

The Examiner's assertion that Appellant argues that the art is highly unpredictable is incorrect. Nowhere in the Appellant's Brief filed January 12, 2004 has the Appellant

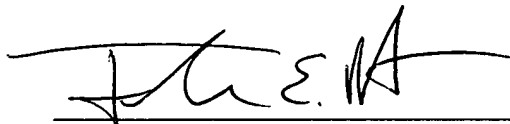
argued such. Appellant wishes only to clarify the record on this point and present a correct assessment of the arguments in the present application.

### CONCLUSION

In view of the foregoing, it is respectfully requested that the Board of Patent Appeals and Interferences reverse the Rejections and that the subject application be allowed forthwith.

Respectfully submitted,

Date: June 1, 2004

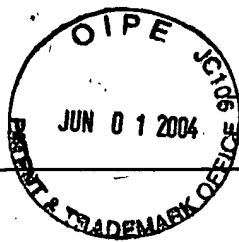


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June 1, 2004

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P.O. Box 1450  
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Art Unit: 1634  
Examiner: Juliet C. Switzer  
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Re: U.S. Patent Application Serial No. 09/552,087 filed April 21, 2000  
Inventors: Joseph R. BYRUM *et al.*  
Title: Nucleic Acid Molecules and Other Molecules Associated with Plants  
Atty Dkt. 16517.132

Sir:

Transmitted herewith for appropriate action by the U.S. Patent and Trademark Office (PTO) are the following documents:

1. Appellant's Reply Brief (in triplicate); and
2. Return postcard.

It is respectfully requested that the attached postcard be stamped with the date of filing of these documents, and that it be returned to our courier.

In the event that extensions of time beyond those petitioned for herewith are necessary to prevent abandonment of this patent application, then such extensions of time are hereby petitioned. Applicants do not believe any additional fees are due in conjunction with this filing. However, if any fees are required in the present application, including any fees for extensions of time, then the Commissioner is hereby authorized to charge such fees to Arnold & Porter LLP Deposit Account No. 50-2387, referencing docket number 16517.132. A duplicate copy of this letter is enclosed.

Sincerely,

David R. Marsh (Reg. No. 41,408)  
Holly Logue Prutz (Reg. No. 47,755)

Enclosures